

**BEFORE THE
PHYSICIAN ASSISTANT COMMITTEE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)
Against:)

AARON H. KUEHL, P.A.)

Case No: 1E-2002-132677

Physician Assistant)
License Number PA-14224)

Respondent.)
_____)

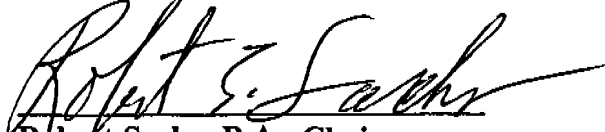
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision and Order by the Physician Assistant Committee, Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 16, 2003

ORDERED April 16, 2003

PHYSICIAN ASSISTANT COMMITTEE


Robert Sachs, P.A., Chairperson

BILL LOCKYER, Attorney General
of the State of California
STEVEN H. ZEIGEN, State Bar No. 60225
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2074
Facsimile: (619) 645-2061

Attorneys for Complainant

**BEFORE THE
PHYSICIAN ASSISTANT COMMITTEE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

AARON H. KUEHL, P.A.
3984 Jewell Street, #R 305
San Diego, CA 92109

Physician Assistant No. PA 14224

Respondent.

Case No. 1E-2002-132677

OAH No. L-2002100152

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
above-entitled proceedings that the following matters are true:

PARTIES

1. Richard L. Wallinder, Jr. (Complainant) is the Executive Officer of the
Physician Assistant Committee. He brought this action solely in his official capacity and is
represented in this matter by Bill Lockyer, Attorney General of the State of California, by Steven
H. Zeigen, Deputy Attorney General.

2. Respondent Aaron H. Kuehl, P.A. (Respondent) is represented in this
proceeding by attorney M. Gayle Askren, Esq. , whose address is 1012 Park Place, Coronado,
California 92118.

3. On or about January 6, 1998, the Physician Assistant Committee issued Physician Assistant License No. PA 14224 to Aaron H., Kuehl, P.A. (Respondent).

JURISDICTION

4. Accusation No. 1E-2002-132677 was filed before the Physician Assistant Committee (Committee) for the Medical Board of California, Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on or about June 25, 2002. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 1E-2002-132677 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 1E-2002-132677. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation of paragraphs 12, 13, and 15 of the Accusation No. 1E-2002-132677.

9. Respondent agrees that his Physician Assistant License is subject to discipline and he shall be bound by the Physician Assistant Committee (Committee) 's

1 imposition of discipline as set forth in the Disciplinary Order below.

2 CONTINGENCY

3 10. This stipulation shall be subject to approval by the Physician Assistant
4 Committee. Respondent understands and agrees that counsel for Complainant and the staff of
5 the Physician Assistant Committee may communicate directly with the Committee regarding this
6 stipulation and settlement, without notice to or participation by Respondent or his counsel. By
7 signing the stipulation, Respondent understands and agrees that he may not withdraw his
8 agreement or seek to rescind the stipulation prior to the time the Committee considers and acts
9 upon it. If the Committee fails to adopt this stipulation as its Decision and Order, the Stipulated
10 Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall
11 be inadmissible in any legal action between the parties, and the Committee shall not be
12 disqualified from further action by having considered this matter.

13 11. The parties understand and agree that facsimile copies of this Stipulated
14 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
15 force and effect as the originals.

16 12. In consideration of the foregoing admissions and stipulations, the parties
17 agree that the Committee may, without further notice or formal proceeding, issue and enter the
18 following Disciplinary Order:

19 DISCIPLINARY ORDER

20 IT IS HEREBY ORDERED that Physician Assistant License No. PA 14224
21 issued to Respondent Aaron H. Kuehl, P.A. is revoked. However, the revocation is stayed and
22 Respondent is placed on probation for seven (7) years on the following terms and conditions.

23 1. ACTUAL SUSPENSION As part of probation, respondent is suspended
24 from the practice of medicine as a physician assistant for Ninety (90) days, beginning the
25 effective date of this decision.

26 2. CONTROLLED DRUGS - TOTAL RESTRICTIONS Respondent shall
27 not administer, order, transmit orally or in writing on a patient's record or hand to a patient or
28 possess any controlled substances as defined in the California Uniform Controlled Substances

1 Act, except upon the order of a physician for whom respondent is acting as a physician assistant.

2 3. DRUGS - ABSTAIN FROM USE / EXEMPTION FOR PERSONAL USE

3 Respondent shall abstain completely from the personal use or possession of controlled
4 substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs
5 as defined by Section 4211 of the Business and Professions Code, or any drugs requiring a
6 prescription.

7 Orders forbidding respondent from personal use or possession of controlled
8 substances or dangerous drugs do not apply to medications lawfully prescribed to respondent for
9 a bona fide illness or condition by another practitioner.

10 4. CONTROLLED DRUGS - MAINTAIN RECORD Respondent shall
11 maintain a record of all controlled substances administered, transmitted orally or in writing on a
12 patient's record or handed to a patient by the respondent during probation showing all the
13 following: 1) the name and address of the patient, 2) the date, 3) the character and quantity of
14 controlled substances involved, 4) the indications and diagnosis for which the controlled
15 substance was furnished, and 5) the name of the supervising physician prescriber.

16 Respondent shall keep these records in a separate file or ledger, in chronological
17 order, and shall make them available for inspection and copying by the Physician Assistant
18 Committee or its designee, upon request and without charge.

19 5. ALCOHOL- ABSTAIN FROM USE Respondent shall abstain
20 completely from the use of alcohol-containing products and beverages.

21 6. BIOLOGICAL FLUID TESTING Respondent shall immediately submit
22 to biological fluid testing upon the request of the Physician Assistant Committee or its designee.
23 The cost of biological fluid testing shall be borne by respondent.

24 7. DIVERSION PROGRAM Within 30 days of the effective date of this
25 decision, respondent shall enroll and participate in the Physician Assistant Committee's
26 Diversion Program until the committee or its designee determines that further treatment and
27 rehabilitation is no longer necessary. Respondent shall participate in the program at his own
28 expense. Quitting the program without permission or being expelled for cause shall constitute a

1 violation of probation by respondent.

2 8. ETHICS COURSE Within three months of the effective date of this
3 decision, respondent shall submit to the committee or its designee for its prior approval a course
4 in ethics, which respondent shall successfully complete during the first year of probation.
5 Respondent shall participate in an ethics course at his own expense.

6 9. MONITORING / SUPERVISION Within 30 days from the expiration of
7 respondent's ninety (90) day suspension from the practice of medicine as a physician assistant,
8 respondent shall submit to the committee or its designee for its prior approval a plan of practice
9 in which respondent's practice shall be monitored by an approved supervising physician
10 responsible for patients treated by the physician assistant.

11 If the supervising physician/monitor resigns or is no longer available, respondent
12 shall, within 15 days, move to have a new supervising physician/monitor appointed, through
13 nomination by respondent and approval by the committee.

14 Respondent shall not practice as a physician assistant until the supervising
15 physician is approved by the committee.

16 10. USE OF PROTOCOLS PROHIBITED Respondent is prohibited from
17 using protocols when practicing as a physician assistant. All orders must be patient specific.

18 11. MAINTENANCE OF PATIENT MEDICAL RECORDS Respondent
19 shall keep written medical records on all patient contacts (including all visits and phone calls).

20 All medical records originated by the respondent shall be reviewed, initialed, and
21 dated daily by a supervising physician.

22 This condition shall be valid for three (3) years from the effective date of this
23 decision.

24 12. ON-SITE SUPERVISION Respondent shall have at all times on-site or
25 on call supervision by an approved supervising physician.

26 13. NOTIFICATION OF EMPLOYER AND SUPERVISING PHYSICIAN
27 Respondent shall notify his current, and any subsequent employer and supervising physician(s),
28 of his discipline and provide a copy of the Stipulation, Decision, and Order to each such

1 employer and supervising physician(s) during his period of probation, at the onset of that
2 employment. Respondent shall ensure that each employer informs the Physician Assistant
3 Examining Committee, or its agent, in writing within thirty (30) days, verifying that the employer
4 and supervising physician(s) have been informed of this Stipulation and Order.

5 14. OBEY ALL LAWS Respondent shall obey all federal, state, and local
6 laws, and all rules governing the practice of medicine as a physician assistant in California, and
7 remain in full compliance with any court ordered criminal probation, payments, and other orders.

8 15. QUARTERLY REPORTS Respondent shall submit quarterly
9 declarations under penalty of perjury on forms provided by the committee or its designee, stating
10 whether there has been compliance with all the conditions of probation.

11 16. SURVEILLANCE PROGRAM Respondent shall comply with the
12 committee's probation surveillance program.

13 17. INTERVIEW WITH MEDICAL CONSULTANT Respondent shall
14 appear in person for interviews with the committee's medical or expert physician assistant
15 consultant upon request at various intervals and with reasonable notice.

16 18. TOLLING FOR OUT-OF -STATE PRACTICE OR RESIDENCE The
17 period of probation shall not run during the time respondent is residing or practicing outside the
18 jurisdiction of California. If, during probation, respondent moves out of the jurisdiction of
19 California to reside or practice elsewhere, including federal facilities, respondent is required to
20 immediately notify the committee in writing of the date of departure and the date of return, if
21 any.

22 19. INITIAL PROBATION INTERVIEW Respondent shall appear in person
23 for an initial interview with a designee of the Physician Assistant Examining Committee within
24 90 days of the final decision. Respondent shall subject himself to an initial interview at a time
25 and place determined by the committee or its designee.

26 20. UNANNOUNCED CLINICAL SITE VISIT At least once per calendar
27 year, or more frequently as determined by the committee or its designee, unannounced clinical
28 site visits shall be made by the committee or its designee to ensure that respondent is complying

1 with all terms and conditions of probation.

2 21. COMPLETION OF PROBATION Upon successful completion of
3 probation as determined by the committee's executive officer, respondent's license will be fully
4 restored.

5 22. VIOLATION OF PROBATION If respondent violates probation in any
6 respect, the committee, after giving respondent notice and the opportunity to be heard, may
7 revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition
8 to revoke probation is filed against respondent during probation, the committee shall have
9 continuing jurisdiction until the matter is final, and the period of probation shall be extended
10 until the matter is final.

11 23. COST RECOVERY The respondent is hereby ordered to reimburse the
12 Physician Assistant Examining Committee the amount of \$4,299.00 within 90 days from the
13 effective date of this decision for its investigative and prosecution costs. Failure to reimburse the
14 committee's costs for its investigation and prosecution shall constitute a violation of the
15 probation order, unless the committee agrees in writing to payment by an installment plan
16 because of financial hardship. The filing of bankruptcy by the respondent shall not relieve the
17 respondent of his responsibility to reimburse the committee for its costs.

18 24. VOLUNTARY LICENSE SURRENDER Following the effective date of
19 this probation, if respondent ceases practicing due to retirement, health reasons, or is otherwise
20 unable to satisfy the terms and conditions of probation, respondent may voluntarily tender his
21 license to the committee. The committee reserves the right to evaluate the respondent's request
22 and to exercise its discretion whether to grant the request, or to take any other action deemed
23 appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered
24 license, respondent will no longer be subject to the terms and conditions of probation.

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FROM : PERFORMANCE PARTNERS PLUS

PHONE NO. : 619 4374812

Mar. 03 2003 05:24PM P2

Sent by: DEPT OF JUSTICE

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03/03/03 12:48PM; JLM/BA

ACCEPTANCE


I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, M. Gayle Askren, Esq. . I understand the stipulation and the effect it will have on my Physician Assistant License No. P.A. 14224. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Physician Assistant Committee, Medical Board of California.

DATED: 3/3/2003, 2003.


AARON H. KUEHL, P.A.
Respondent

I have read and fully discussed with Respondent Aaron H. Kuehl, P.A. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 3/3/2003, 2003.


M. GAYLE ASKREN, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Physician Assistant Committee, Medical Board of California of the Department of Consumer Affairs.

DATED: 3/3, 2003.

BILL LOCKYER, Attorney General
of the State of California

FROM : PERFORMANCE PARTNERS PLUS

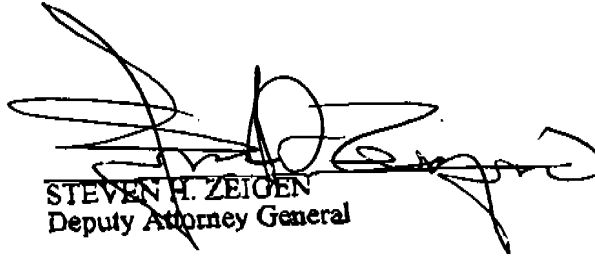
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Sent by: DEPT OF JUSTICE



STEVEN H. ZEIGLER
Deputy Attorney General

Attorneys for Complainant

DOJ Docket Number: 03578160-SD2002AD0403
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Exhibit A

Accusation No. 1E-2002-132677

BILL LOCKYER, Attorney General
of the State of California
STEVEN H. ZEIGEN, State Bar No. 60225
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2074
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PHYSICIAN ASSISTANT COMMITTEE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 1E-2002-132677

AARON H. KUEHL, P.A.
3984 Jewell Street, #R 305
San Diego, California 92109

ACCUSATION

Physician Assistant No. PA 14224

Respondent.

Complainant alleges:

PARTIES

1. Richard L. Wallinder, Jr. (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physician Assistant Committee, Department of Consumer Affairs.

2. On or about January 6, 1998, the Physician Assistant Committee issued Physician Assistant No. PA 14224 to Aaron H. Kuehl, P.A. (Respondent). The Physician Assistant was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2004, unless renewed.

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1 8. Section 2234 (e) of the Code states "The commission of any act involving
2 dishonesty or corruption which is substantially related to the qualifications, functions, or duties
3 of a physician and surgeon" is unprofessional conduct."

4 9. Section 11173 of the Health and Safety Code states that "(a) no person
5 shall obtain or attempt to obtain controlled substances, or procure the administration of or
6 prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or
7 (2) by the concealment of a material fact"

8 10. California Code of Regulations ("CCR"), Title 16, Section 1399.521
9 provides in pertinent part, "[i]n addition to the grounds set forth in section 3527, subdivision (a),
10 of the [C]ode the [C]ommittee may deny, issue subject to terms and conditions, suspend, revoke,
11 or place on probation a physician assistant for the following causes:

12 "(a) any violation of the State Medical Practice Act which would
13 constitute unprofessional conduct for a physician and surgeon.

14 ". . ."

15 11. Vicodin is a Schedule III controlled substance under Health and Safety
16 Code section 11056(e). Soma (Carisoprodol) is a non-scheduled prescription drug indicated for
17 the relief of acute, painful musculoskeletal conditions. Ultram (Tramadol hydrochloride) is a
18 non-scheduled prescription drug used in the management of moderate to moderately severe pain.

19 FIRST CAUSE FOR DISCIPLINE

20 (Unlawful Use or Prescribing)

21 12. Respondent is subject to disciplinary action under section 2239 in that he
22 unlawfully used Vicodin and Soma. The circumstances are as follows:

23 a. On or about December 16, 2001, respondent was hired by
24 Dr. S. to be his physician assistant and provide pre and post-operative care, and to
25 assist Dr. S during surgical procedures.

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1 b. On or about April 10, 2002, Dr. S., and his office manager
2 spoke with respondent about the theft and use of drugs from the office supply.
3 They also discussed with respondent his attendance problems, and the two
4 occasions in which respondent passed out during his assisting in surgeries.

5 c. Respondent admitted taking Vicodin, Soma, and Ibuprofen
6 from the office supply. He also admitted taking two Soma tablets on the morning
7 of April 9, 2002.

8 d. Respondent also admitted taking a bottle of Vicodin and a
9 bottle of Soma in January 2002, from the office supply cabinet.

10 e. On or about May 8, 2002, respondent provided the Medical
11 Board with a urine sample. At the time of the sample respondent was asked
12 whether he had taken any medications that day and he said "no".

13 f. On or about the results of the urinalysis were received. It
14 tested positive for Ultram

15 13. Respondent unlawfully used controlled and dangerous drugs within the
16 meaning of section 2239 by reason of, but not limited too, the following:

17 a. Paragraph 12 (a) through (f) is incorporated by reference as
18 if fully set forth herein.

19 b. During his employment with Dr. S., respondent, on two
20 different occasions, unlawfully took bottles of Vicodin and Soma from Dr. S.'s
21 office supply.

22 SECOND CAUSE FOR DISCIPLINE

23 (Intoxicated While Treating Patient)

24 14. Respondent is subject to disciplinary action under section 2280 in that
25 during the time of his employment with Dr. S. respondent took and ingested Vicodin and/or
26 Soma, the effects of which caused him to be under intoxicated at a time when he was assisting
27 Dr. S. in surgical procedures. Paragraph 12 (a) through (f) is incorporated by reference as if fully
28 set forth herein.

